



Paper No. 10

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**AUG 26 1999**

In re Application of  
Karen L. Huff  
Application No. 08/910,548  
Filed: 26 December, 1995  
Attorney Docket No. (None)

**SPECIAL PROGRAMS OFFICE  
DAC FOR PATENTS**

**ON PETITION**

This is a decision on the petition(s) alternatively under 37 C.F.R. §1.137(a)<sup>1</sup> and (b),<sup>2</sup>

<sup>1</sup> A Petition filed under the provisions of 37 C.F.R. §1.137(a) must be accompanied by:

(a) The required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application for patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;

(b) the petition fee required by 37 C.F.R. §1.17(l);

(c) A showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the reply due date until the filing of a grantable petition pursuant to the is paragraph was unavoidable; and

(d) Any terminal disclaimer (and fee set forth in 37 C.F.R. §1.20(d)) required pursuant to 37 C.F.R. §1.137(c).

An application is "unavoidably" abandoned only where Petitioner (or Petitioner's counsel) takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, the response is not timely received in the Office. That is, in the context of ordinary human affairs the test is such care as is generally used and observed by prudent and careful persons in relation to their most important business. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r. Pat. 1913).

The petition recites as a basis for unavoidable delay that Petitioner's check was not honored by the bank because Petitioner's budgeting plans were altered due to liabilities accruing upon the death of a family member. Unfortunately, controlling case law does not recognize such conditions in satisfying the test set forth in Pratt. Therefore, the petition is not being considered under the unavoidable standard.

<sup>2</sup> Effective December 1, 1997, the provisions of 37 C.F.R. §1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 C.F.R. §1.137(b). A grantable petition filed under the provisions of 37 C.F.R. §1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 C.F.R. §1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

filed 16 February, 1999, supplemented 26 July, 1999, and decided under 37 C.F.R. §1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to pay timely the Issue Fee in response to the Notice of Allowance and Issue Fee Due mailed on 21 May, 1998, and due on or before 21 August, 1998. A Notice of Abandonment was mailed 25 November, 1998.

This application is being forwarded to Publishing Branch for processing into a patent.

Telephone inquiries concerning this matter may be directed to Petitions Attorney John J. Gillon, Jr, at (703) 305-9199.



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